



HB 2419
RELATING TO LAND USE
Committee on Water, Land, and Ocean Resources

February 3, 2012

9:00 a.m.

Room 325

The Office of Hawaiian Affairs **OPPOSES** HB2419, which would deprive the community of a meaningful opportunity for input on large developmental projects, make it difficult for the Land Use Commission (LUC) to fulfill its affirmative duty to protect constitutionally recognized Native Hawaiian traditional and customary rights, and put Native Hawaiian and other constitutionally protected rights at risk.

Decision-making by the LUC on reclassifications of agricultural, rural, or urban land parcels greater than fifteen acres provide an opportunity for important and meaningful citizen participation. Upon petition to the LUC, the public may participate in a public hearing where they can express their views and provide information about a specific area's history, resources, prior land and water use, and Native Hawaiian people's relationship with the area. Moreover, the LUC allows for intervention and introduction of evidence of a project's impacts in an open process that informs large-scale planning and land use decisions.

The problem with HB2419 is that controversial projects would be able to hide amongst a number of proposed county plan amendments, rather than be given individual review. Even large scale projects that would require a reclassification for a thousand acres of agricultural lands to urban district may not receive individual consideration, under HB2419.

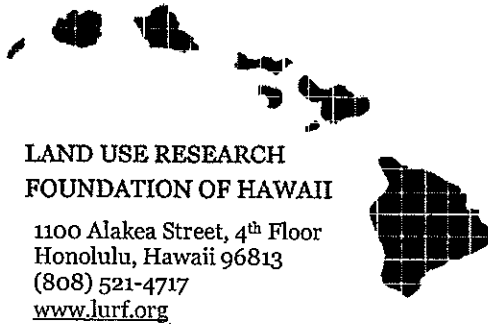
Under the Hawai'i Constitution, the State has an affirmative duty to preserve and protect Native Hawaiian traditional and customary rights. In making decisions on boundary amendments, the LUC must take into consideration impacts to the Native Hawaiian culture. The Hawai'i Supreme Court, in *Ka Pa'akai O Ka 'Aina v. Land Use Comm'n*, said that the LUC must *at a minimum* make specific findings and conclusions as to 1) the identity and scope of "valued, cultural, historical, or natural resources," 2) the extent to which those resources – including Native Hawaiian traditional and customary rights – will be affected, and 3) the feasible action that the LUC can take to reasonably protect Native Hawaiian rights. Such analysis is not regularly performed in the process to revise a county plan. HB2419 would only require the county to file a petition with the LUC for a declaratory order that could approve a number of proposed amendments. It is unclear how the

LATE TESTIMONY

LUC will be able to fulfill their obligations, increasing the risk that Native Hawaiian traditional and customary practices will not be given adequate consideration.

Participation in decision-making processes can be and has been significant for protecting and asserting Native Hawaiian rights, as well as guiding Hawai'i into a more sustainable future. HB2419 would significantly weaken the State's control over overall state planning efforts for appropriate and sustainable growth.

Therefore, OHA urges the committee to HOLD HB2419. Mahalo for the opportunity to testify on this important measure.



LAND USE RESEARCH
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February 3, 2012

Representative Jerry L. Chang, Chair
Representative Sharon E. Har, Vice Chair
House Committee on Water, Land & Ocean Resources

Support of HB 2419 Relating to Land Use. (Requires counties to seek declaratory ruling from the land use commission for reclassification of lands in a county general plan.)

Friday, February 3, 2012, 9:00 a.m., in CR 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **support of HB 2419**, and to offer comments and proposed revisions.

HB 2419. This bill requires the counties, when making amendments to a county general plan that include reclassification of agricultural, rural, or urban land parcels greater than fifteen acres, to file a petition with the land use commission (LUC) for a declaratory order approving the amended county general plan. Changes to the general plan would take effect immediately upon the LUC's approval of the reclassification.

LURF's Position. LURF supports the intent and purpose of HB 2419, to facilitate the land use classification process when adopting amendments to a county general plan. The process proposed by this bill recognizes the roles of the counties in providing opportunities for public participation and input, professional review and decision-making by responsible appointed and elected officials; and provides a much-needed process to establish consistent land uses and maps between the state and the county.

Each county has different processes and procedures for land use amendments to the county general plan, community plan and zoning, however, all of these processes involve very inclusive and rigorous review and public input. For example, the process for land use amendments at the City and County of Honolulu (City) include the process set forth below. By the time a project is submitted for City subdivision review, its land use amendment would have had to go through the same process at least three times (general plan, community plan and zoning):

- **Preparation and review by the county planning department staff**, often with the assistance of **private professional land use planners**;

LATE TESTIMONY

- **Review by the County Planning Director;**
- **Community meetings with public input and review:** usually including a presentation by the county planning department and in some cases private professional land use planners hired by the county, public testimony and input;
- **Neighborhood Board meeting, public input and review:** usually including a presentation by the county planning department and in some cases private professional land use planners hired by the county, public testimony and input, and recommendations by the Neighborhood Board;
- **County Planning Commission meeting, public input and review:** including a presentation by the county planning department and in some cases private professional land use planners hired by the county, public testimony and input,, and review and recommendations by the County Planning Commission;
- **At least two County Council Committee meetings, public input and review:** At least two Council Committee meetings, where a proposal can be denied, approved for recommendation, or approved for recommendation with revisions and conditions;
- **At least two full County Council meetings, public input and review:** At least two full Council meetings, including public testimony and input, where a proposal can be denied, approved, or approved with revisions and conditions;
- **Mayor's review and denial or approval.** The public can submit comments to the Mayor.

Given the above county land use amendment process, it appears that this bill will provide a very effective and efficient method for the counties and the LUC to make their respective land use designations and maps consistent.

Comments and recommended revisions. Based on discussions with various county planning officials, LURF respectfully recommends the following revisions to the bill:

1. Allow the declaratory order process to be optional for the counties ("counties may...");
2. LUC boundary amendment petitions must satisfy the Chapter 205 criteria, however, each county has different criteria for their general plans and community plans. Thus, to allow the counties to present petitions which satisfy the LUC criteria, the bills should be revised to provide that the county petition should be based on the county general plans or county development plans, as also defined under Section 226-2, Hawaii Revised Statutes;
3. It should be clarified that the declaratory order should apply to reclassification under Chapter 205, and not to the approval of county general plans or development plans; and
4. The County should be allowed to use the declaratory order process for parcels of 15 acres or less.

Thank you for the opportunity to present comments in support of this bill. LURF stands willing to work further with the legislature and the counties regarding this measure.

BIA-HAWAII

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Testimony to the House Committee on Water, Land, & Ocean Resources

Friday, February 3, 2012

9:00 a.m.

State Capitol, Room 325

RE: H.B. 2419, Relating to Land Use

Good morning Chair Chang, Vice Chair Har, and members of the committee:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII strongly supports H.B. 2419, which requires the counties to seek declaratory ruling from the land use commission for reclassification of lands in a county general plan. Changes to the general plan take effect immediately upon approval of the reclassification by the land use commission.

As stated in the bill, in making amendments to county general plans, the Counties are inclusive, holding many public hearings and allowing for public input on the proposed amendments. Amendments to a county general plan are voted on by appointed commissions as well as elected legislative bodies. Consequently, counties conduct more community outreach than the land use commission.

Moreover, the Counties are better equipped to plan for urban expansion as they are primarily responsible for the government services that need to be provided in urban areas. We find the existing process cumbersome and needlessly redundant. For example, the current process would have the Counties plan for urban expansion in their general plans or sustainable community plans/development plans, then wait until a private developer is willing to take the matter before the State Land Use Commission to reclassify the lands for urban expansion.

H.B. 2419 would remove some of the unnecessary redundancy in the process and also create more certainty for private investors. BIA-Hawaii **strongly supports** this measure.

Thank you for the opportunity to testify.



EVP/CEO
BIA-Hawaii